

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:	§	
	§	CASE NO. 08-35653-KRH-11
CIRCUIT CITY STORES, INC., <u>et al.</u> ,	§	
	§	Chapter 11
Debtors	§	

RESPONSE TO TRUSTEE'S NOTICE OF INTENT TO DESTROY RECORDS

The Texas Comptroller of Public Accounts ("Texas Comptroller") responds as follows to the Trustee's Notice of Intent to Destroy Old Miscellaneous Real Estate Files, Etc. (the "Motion to Destroy") dated January 4, 2011.

1. The Texas Comptroller is still in the process of auditing the Debtor's books and records to determine the amount of Texas sales and use taxes owed for the 2004-2008 period. Considerable difficulty has been encountered in obtaining access to requested financial records, with the Debtor refusing on several occasions to supply records to Comptroller auditors. The Debtor has filed an objection to the Texas Comptroller's prepetition sales and use tax claim.

2. Under Texas Tax Code § 111.0041 and Texas Comptroller Rule 3.281, entities conducting retail business in Texas are required to keep and maintain records of their business activities. Under Texas Tax Code § 111.004, the Texas Comptroller is fully empowered to review such books and records.

3. If books and records sufficient to allow the Texas Comptroller to complete a tax audit are not properly maintained, the Comptroller may estimate liability. Further, since the burden of proof of Texas tax liability in any contested proceeding will ultimately be upon the Trustee as the successor in interest to the Debtors, the Trustee assumes some risk if he fails to maintain any books and records relevant to the Texas Comptroller's audit. See Raleigh v. Illinois, 120 S. Ct. 1951

(2000)(burden of proof in objecting to tax claim in bankruptcy is on debtor/trustee).

4. The Trustee, as the party most familiar with the Debtor's books and records, is the party responsible for determining what records are necessary to maintain for review in tax audits. That responsibility cannot be shifted to tax authorities, who have not seen the records in question, by motions proposing to destroy records. It is up to the Trustee to determine whether the records he seeks to destroy will be needed for tax audit purposes. To the extent, if any, that the Motion to Destroy may seek to shift the Trustee's record-keeping responsibilities to any other party, including tax authorities, the Texas Comptroller objects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 19, 2011, a true copy of the foregoing was served by the method and to the following parties as indicated:

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